IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3228 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMPRASAD RAM ASHRE PRAJAPATI

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

MR SJ DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 04/07/2000

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 29-3-2000 passed by the

Police Commissioner, Ahmedabad City and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, she cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. Heard learned advocate for the petitioner and learned APP for the State. Also perused the material on record. According to learned advocate for the petitioner, the detenu has submitted a representation to the authority on 4-4-2000 and it came to be decided on 10-4-2000,i.e. after the State Govt. has approved the order and, therefore, there is a delay. Learned APP has fairly admitted the fact that representation has been decided after the State Govt. has approved the order.

4. In the instant case, it appears that though representation has been sent on 4-4-2000, it came to be decided on 10-4-2000, i.e. after the State Govt. has approved the order which makes the detention order illegal. Moreover, there is a delay. The Apex Court placing reliance on a decision of the Constitutional Bench in K.M.Abdulla Kunhi and B.L.Abdul Khader V. Union of India, (1991) 1 SCC 476 : (1991 AIR SCW 362), has held in a case of Rajammal Vs. State of Tamil Nadu and another reported in AIR 1999 S.C. 684 as under:

> "Detention-Unexplained delay of five days in considering and disposing detenu's representation-Mere absence of Minister at Headquarters not sufficient to justify delay-Detention vitiated."

It has been further held by the Apex Court in para 9 as under:

> "The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing the representation.It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned."

5. It is to be noted that in this case no satisfactory explanation has been put forward by the respondents about the delay in deciding the representation. As representation of the petitioner has not been decided by the authority in time, the rights guaranteed under Article 22(5) of the Constitution of India are violated which make the order of detention illegal. Therefore, in view of the above judgment of the Apex Court, the continued detention of the detenu is bad and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

6. The petition is allowed. The impugned order of detention dated 29-3-2000 passed against the petitioner-detenu is hereby quashed and set aside. The detenu-Ramprasad Ram Ashre Prajapati is set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.DHOLAKIA,J.)
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